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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,409	03/18/2002	Douglas D. Olson	102031-201	5271

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WIGGIN & DANA LLP
ATTENTION: PATENT DOCKETING
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EXAMINER

TUDOR, HAROLD JAY

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 10/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application 10/088,409	Applicant(s) Olson et al	
	Examiner Tuder, H.J.	Art Unit 3641	Confirmation No.

- The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address -

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 3-18-02, 7-23-03
- ☐ This action is **FINAL**. ☒ This action is non-final.
- ☐ Since this application is in condition for allowance except for the formal matters, **prosecution as to the merits is closed** accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 22-53 is/are pending in this application.
- Of the above claim(s) 22-33 is/are withdrawn from consideration.
- ☒ Claim(s) 34-38 is/are allowed.
- ☒ Claim(s) 39-53 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved or ☐ disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.
- ☐ The drawing(s) filed on _____ is/are ☐ accepted or ☐ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d) or (f).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- *Certified copies not received:

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- ☐ The translation of the foreign language provisional application has been received.

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Art Unit: 3641

1. Applicants have elected, with traverse, the invention of Group II, claims 34-53. Claims 22-33, drawn to the non-elected invention, have been withdrawn from consideration in accordance with 37 CFR 1.142(b).

2. Applicants' remarks pertaining to the restriction requirement have been carefully considered but are not deemed to be persuasive. Groups I and II lack the same or corresponding special technical feature for the following reason: The method of Group I does not require the specific structure of the ammunition claimed in Group II, note for example claim 30. The search and examination of all the claims of the entire application can not be made without serious burden. Therefore, the restriction requirement is deemed to be proper and is made FINAL.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 39-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

Art Unit: 3641

regards as the invention. Claim 39 is incomplete in that it does not state that the case of one round fired by the discharging apparatus serves as a projectile expelled by ignition of the propellant charge contained within the case of the next round which is an essential feature of the invention. The clause "said ammunition lacking a projectile having a mass in excess of a mass of the case", in lines 8 and 9 of claim 39, is misleading if not inaccurate. The member has a mass which is less than the mass of the case, line 32 of page 3 through line 1 of page 4. The phrase "of the type", in line 3 of claim 43, is vague and indefinite. Claim 47 is vague and indefinite in that it is directed to the combination of an ammunition and an industrial ballistic tool barrel which does not further restrict claim 45 which is directed solely to an ammunition.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3641

6. Claims 39 and 41, as far as they can be understood because of their indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnsen in view of Staiger. Johnsen discloses, for example in Figs. 5, 7-9 and 12, a cartridge comprising a metal casing 126 and a cover 124. However, Johnsen does not disclose a case formed of a cast zinc alloy. Staiger teaches that it is old and well known in the art to form a case for an ammunition of a cast zinc alloy. To form the Johnsen case of a cast zinc alloy, as taught by Staiger as being an art recognized equivalent material for forming a cartridge case, would have been obvious to one having ordinary skill in the art at the time the invention was made.

7. Claims 34-38 are allowable.

8. Claims 43-53 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harold J. Tudor, whose telephone number is (703) 306-4172.

Art Unit: 3641

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 872-9306. The fax phone number for this Group is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read "Harold Tudor". The signature is fluid and cursive, with the first name "Harold" and last name "Tudor" clearly distinguishable.

HAROLD J. TUDOR
PRIMARY EXAMINER